

**Cross-Pointe Corporation and United Paperworkers International Union, AFL-CIO, CLC, Petitioner.** Case 13-RC-18774

December 9, 1994

**DECISION, DIRECTION, AND ORDER**

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections to and determinative challenges in an election held November 4, 1993, and the Regional Director's report recommending disposition of them.<sup>1</sup>

The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 44 for and 38 against the Petitioner, with 7 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, and adopts the Regional Director's findings and recommendations.<sup>2</sup>

**DIRECTION**

IT IS DIRECTED that the Regional Director for Region 13 shall, within 14 days of this Decision, Direction, and Order, open and count the ballots of Joseph Fewell, Alvin Bolden, Garth Ingram, John Pessina, and Joel Hanson, and thereafter prepare and serve on the parties a revised tally of ballots. In the event that the

<sup>1</sup>In the absence of exceptions, we adopt pro forma the Regional Director's recommendations that five of the seven challenged ballots be overruled, and one challenge be sustained, and a hearing be held on the other challenge if it remains determinative.

<sup>2</sup>In rejecting the Employer's exception to the Regional Director's recommendation to overrule Objection 5, Members Stephens and Devaney note that the facts alleged in the Employer's proffer are distinguishable from those found with respect to the list-keeping objection in *Days Inn Management Co.*, 299 NLRB 735, 736 (1990), enf. denied in pertinent part 930 F.2d 211 (2d Cir. 1991). In that case, the Board found that an agent of the employer stood by the door of the building in which the polls were located, inquired the name of each arriving employee, and then crossed it off the list of potential voters which he was holding. The Board found that this was objectionable because it amounted to "openly maintaining" a voter list. Id. at 736. The evidence in the Employer's proffered affidavits in the present case shows merely that the Employer's election observer and two other employees (the latter two reporting on observations made after they had voted) had seen one of the Petitioner's observers writing something unknown on a piece of paper. Moreover, assuming the truth of the voter statements to which our dissenting colleague alludes, we find the facts here substantially identical to those in *Textile Service Industries*, 284 NLRB 1108 (1987), in which the Board found unobjectionable an observer's writing, in addition to hash marks, "unknown words" not recognized as names while attempting to conceal the paper.

revised tally of ballots shows that the ballot of Antonio Contreras is determinative, the Regional Director shall set a hearing to determine his voting status. In the event that the revised tally of ballots shows that the Petitioner has received a majority of the valid votes cast, the Regional Director shall issue a certification of representative pursuant to the Board's Rules and Regulations. In the event the revised tally of ballots shows the Petitioner has not received a majority of the valid ballots cast, the Regional Director shall issue a certification of results of election pursuant to the Board's Rules and Regulations.

**ORDER**

It is ordered that the above-entitled matter is referred to the Regional Director for Region 13 for further processing.

MEMBER COHEN, dissenting in part.

Contrary to my colleagues, I find that Objection 5 raises genuine issues of fact. Objection 5 alleges that an observer for the Petitioner engaged in objectionable conduct by keeping a list of those who voted in the election. Thus, if a revised tally shows that the Petitioner won the election, I would direct a hearing on whether the Petitioner's observer kept a list of employees and whether employees were aware of any such conduct. See, e.g., *Days Inn Management Co.*, 299 NLRB 735, 736 (1990).

In my view, the employer has offered sufficient evidence to warrant a hearing. My colleagues say that the Employer's affidavits state only that the Petitioner's observer wrote "something unknown" on a piece of paper as each employee voted. In fact, one affidavit said that the observer wrote "several words," and another affidavit said that the writing occurred when an employee stated his name. The observer says that he only made hash marks. In these circumstances, there is a critical question, factual to its core, as to the precise content of the observer's writing. I would hold a hearing to resolve that factual question.

*Textile Service Industries*, 284 NLRB 1108 (1987), cited by my colleagues, is distinguishable. In that case, after a hearing was held, there was no evidence that names of voters were recorded. In the instant case, a hearing has not been held. Such a hearing could produce evidence that names were recorded. In any event, even if only words were written, I agree with former Member Babson's observation, dissenting in *Textile Service Industries*, that words alone can be used to identify a voter.